

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN M. SHAW and NATIONAL AERONAUTICS SPACE
ADMINISTRATION, LEWIS RESEARCH CENTER, Cleveland, Ohio

*Docket No. 96-2339; Submitted on the Record;
Issued July 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established an emotional condition, tension headaches, or ulcers as causally related to compensable factors of his federal employment.

On August 29, 1994 appellant, a public affairs specialist, filed a claim alleging that his professional accomplishments had been "ignored, disparaged and belittled." Appellant indicated that he had ulcers, tension headaches, and gastrointestinal bleeding. In a narrative statement, appellant discussed his attempts to secure a promotion commencing in 1992. According to appellant, his supervisor, Lynn Bondurant, assured her support and yet the issue was not resolved. Appellant stated that he was eventually told that as a Grade 12 employee, he was already one step above the full performance level and further advancement was impossible. Appellant asserted that there were some nonsupervisory employees at Grade 13, all of whom were African-American and that race and gender were more important in advancement at the employing establishment than ability.

By decision dated July 3, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury in the performance of duty. Appellant request a hearing, which was held on February 14, 1996. In a decision dated July 12, 1996, an Office hearing representative affirmed the denial of the claim.

The Board finds that appellant has not established an injury causally related to compensable factors of his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In the present case, appellant discussed his failure to gain a promotion in 1992 and 1993. At the hearing appellant appeared to deny being upset at not securing a promotion, but rather that he was "doing all these things you are supposed to be doing" and yet he was disparaged, ignored and belittled. As an example, appellant referred to a letter to the editor which was published as an article in a major newspaper; the article was referred to by a supervisor as the kind of activity other employees should do, because "anybody can do it." Appellant perceived this as a belittlement of his accomplishment, albeit an unintentional one. The Board finds that appellant's reaction to such a statement is not related to his regular- or specially-assigned duties, and his perceptions as to the lack of respect given to his publications is not considered a compensable factor of employment.⁴

Appellant's statement and testimony regarding his claim primarily involve his failure to secure a promotion. Decisions regarding promotions are considered to be administrative or personnel matters.⁵ Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.⁶ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁷

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Tanya A. Gaines*, 44 ECAB 923 (1993) (the failure to receive praise that appellant felt she was due did not constitute a compensable employment factor.)

⁵ *Id.*

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁷ See *Sharon R. Bowman*, 45 ECAB 187 (1993).

Appellant has not established error or abuse by the employing establishment in an administrative matter in this case. Appellant alleged that desk audits, which were performed to determine if appellant's position could be reclassified, were erroneous, but he offered no probative evidence to support his allegations. There is a statement from a Mr. Kunath dated May 1, 1995, stating that he represented appellant with regard to a promotion and that supervisor Boundurant had stated during a meeting that appellant's published accomplishments had no bearing on his promotion. This brief statement is not sufficient to establish error or abuse by the employing establishment. As noted above, the denial of the promotion was apparently based on appellant's grade level being above the existing performance level, and there is no indication that a finding of error or abuse in the denial of the promotion was made,⁸ nor is there evidence of record to establish that the administrative actions regarding appellant's request for a promotion were erroneous.

In this case, appellant also raised the issue of reverse discrimination, and he indicated that he spoke to an Equal Employment Opportunity counselor. According to appellant no complaint was actually filed. With respect to a claim based on harassment or discrimination, the Board has held a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ Mere perceptions of harassment or discrimination do not constitute a compensable factor of employment.¹⁰ The unsupported allegations that promotions were based on race or gender are not sufficient to establish a claim based on discrimination in this case.

The Board accordingly finds that appellant has not established a compensable factor of employment as contributing an emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹¹

⁸ Appellant briefly referred to a "threat of unspecified negative consequences" if he pursued the matter of the promotion denial, without providing additional detail.

⁹ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *Sharon R. Bowman*, 45 ECAB 187 (1993).

¹¹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is affirmed.

Dated, Washington, D.C.
July 29, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member